

12/22/99
JC672 U.S. PTO

A/PLANT

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**PLANT PATENT
APPLICATION (35 U.S.C. 161)
DECLARATION
(37 CFR 1.63)**

Declaration Submitted Declaration Submitted after Initial Filing (surcharge (37 CFR 1.16 (e)) required) *OR*

Attorney Docket Number	<i>Cecil T. Pounders, Jr.</i>	
First Named Inventor	COMPLETE IF KNOWN	
Application Number	1	
Filing Date	12-10-1999	
Group Art Unit		
Examiner Name		

As a below named Inventor, I hereby declare that:

My residence, post office address, and citizenship are as stated below next to my name.

I believe I am the original, first and sole inventor (if only one name is listed below) or an original, first and joint inventor (if plural names are listed below) of the new and distinct variety of:

Ilex

plant named: *Xia Yen*

which is claimed and for which a plant patent is sought, the specification of which

is attached hereto *OR* was filed on (MM/DD/YYYY) as United States

Application Number and was amended on (MM/DD/YYYY) (if applicable).

I hereby state that I have reviewed and understand the contents of the above identified specification, including the claim, as amended by any amendment specifically referred to above.

I have asexually reproduced the plant to which this application applies.

Said plant was found in a cultivated area (check this box for newly found plant only)

I acknowledge the duty to disclose information which is material to patentability as defined in 37 CFR 1.56.

I hereby claim foreign priority benefits under 35 U.S.C. 119(a)-(d) or 365(b) of any foreign application(s) for patent or inventor's certificate, or 365(a) of any PCT International application which designated at least one country other than the United States of America, listed below and have also identified below, by checking the box, any foreign application for patent or inventor's certificate, or of any PCT International application having a filing date before that of the application on which priority is claimed.

Prior Foreign Application Number(s)	Country	Foreign Filing Date (MM/DD/YYYY)	Check Only If Priority Not Claimed	Certified Copy Attached? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>
<input type="checkbox"/> Additional foreign application numbers are listed on a supplemental priority data sheet PTO/SB/02B attached hereto.				
I hereby claim the benefit under 35 U.S.C.119(e) of any United States provisional application(s) listed below.				
Application Number(s)	Filing Date (MM/DD/YYYY)		<input type="checkbox"/> Additional provisional application numbers are listed on a supplemental priority data sheet PTO/SB/02B attached hereto.	
<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	

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Burden Hour Statement: This form is estimated to take 0.4 hours to complete. Time will vary depending upon the needs of the individual case. Any comments on the amount of time you are required to complete this form should be sent to the Chief Information Officer, Patent and Trademark Office, Washington, DC 20231. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Assistant Commissioner for Patents, Washington, DC 20231.

VERIFIED STATEMENT CLAIMING SMALL ENTITY STATUS
(37 CFR 1.9(f) & 1.27(b))--INDEPENDENT INVENTOR

Docket Number (Optional)

Applicant or Patentee: Cecil T. Pounders, Jr.

Application or Patent No.: 12-10-99

Filed or Issued: 12-10-99

Title: Ilex Hybrid Variety Named 'Xia Yen'

As a below named inventor, I hereby declare that I qualify as an independent inventor as defined in 37 CFR 1.9(c) for purposes of paying reduced fees to the Patent and Trademark Office described in:

the specification filed herewith with title as listed above.

the application identified above.

the patent identified above.

I have not assigned, granted, conveyed or licensed and am under no obligation under contract or law to assign, grant, convey or license, any rights in the invention to any person who would not qualify as an independent inventor under 37 CFR 1.9(c) if that person had made the invention, or to any concern which would not qualify as a small business concern under 37 CFR 1.9(d) or a nonprofit organization under 37 CFR 1.9(e).

Each person, concern or organization to which I have assigned, granted, conveyed, or licensed or am under an obligation under contract or law to assign, grant, convey, or license any rights in the invention is listed below:

No such person, concern, or organization exists.

Each such person, concern or organization is listed below.

Separate verified statements are required from each named person, concern or organization having rights to the invention averring to their status as small entities. (37 CFR 1.27)

I acknowledge the duty to file, in this application or patent, notification of any change in status resulting in loss of entitlement to small entity status prior to paying, or at the time of paying, the earliest of the issue fee or any maintenance fee due after the date on which status as a small entity is no longer appropriate. (37 CFR 1.28(b))

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application, any patent issuing thereon, or any patent to which this verified statement is directed.

Cecil T. Pounders, Jr.

NAME OF INVENTOR

Cecil T. Pounders, Jr.

Signature of inventor

12-10-99

Date

NAME OF INVENTOR

Signature of inventor

Date

NAME OF INVENTOR

Signature of inventor

Date

In The United States Patent and Trademark Office

"Application to Patent"

APPLICATION OF CECIL T. POUNDERS, JR.

For: Ilex Hybrid Variety Named 'Xia Yen'

Q. Do you have any other questions for the witness?

SUMMARY OF THE INVENTION

My invention is a unique ornamental type of Ilex selected by me from a second generation group of open pollinated seedlings of *Ilex X attenuata* (*I. opaca X I. cassine*).

My goal was to select a tough ornate shrub combining *I. cassine*'s fine leaf texture and uniform branching with *I. opaca*'s better leaf color and tolerance of cold and moisture stress. This invention incorporates the desired traits from the original species differentiating it from all other forms of Ilex of which I am aware. The new clone has been named the Xia Yen variety.

The variety exhibits the following combination of traits:

- (a) lustrous evergreen leaves intermediate in texture between leaves of the two parental species,
- (b) balanced, vigorous pyramidal crown without extensive shearing due to strong apical dominance,
- (c) annual crops of bright red fruit in early fall which remain until spring,
- (d) environmental tolerances equivalent to *I. opaca*.

Xia Yen was selected as a superior replacement for *Ilex X attenuata* 'Foster #2', a holly selection extensively planted in the southern United States. Under production conditions Xia Yen is self-branching with strong apical dominance which reduces production cost when compared to Foster holly while in landscapes Xia Yen displays superior leaf color and more symmetric branching. Xia Yen resembles Foster #2 Holly's leaf texture and crown shape more than Xia Xiang and Huo Yen Hollies do.

My new variety, Xia Yen, has been asexually propagated by cutting at Mobile, Decatur, and Loxley, Alabama. Propagules demonstrated that the distinctive combination of characteristics has been established and transmitted to successive generations.

It is anticipated Xia Yen will be marketed bearing the DIXIE STAR HOLLY trademark.

BRIEF DESCRIPTION OF THE PHOTOGRAPHS

The accompanying photographs show typical specimens of my new variety of *Ilex* during fall and early winter as depicted in color as true as is reasonably possible to make the same in color photographs of the character. The specimens illustrated were being grown in the ground at Decatur, AL and in nursery containers at Loxley, AL.

FIG. 1 illustrates shape, size and color of fruit and foliage,

FIG. 2 illustrates plant uniformity under nursery conditions.

DETAILED DESCRIPTION

The following is a detailed description of my new variety of *Ilex* made from observation of plants growing in the ground at Baldwin County, AL. Color terminology is in accordance with the R.H.S. Colour Chart of the Royal Horticultural Society, London, England.

Class: *Ilex X attenuata*

Parentage: *Ilex opaca X Ilex cassine*

Foliage:

Type.-Evergreen, glossy, coriaceous. Leaves elliptic-lanceolate, serrate with minute spine tipped teeth.

Size.-Leaf size ranges from 4-6 cm long and 1-2 cm wide. Size is affected by environmental factors such as light intensity and plant nutrition.

Color.-Upper surfaces of mature leaves are closest to Green Group 137A; lower surface Green Group 138B.

Petiole.-Ranges from 7 to 9 mm, grooved, color Greyed Red Group 178B.

Stems:

Color.-On new growth stems are Greyed Purple 187A, maturing to Greyed Green Group 197A. Bark on trunks and branches is Black Group 202D.

Inflorescence and Fruit:

Flowers.- Pistillate, usually solitary in leaf axils or at nodes just below leaves on initial spring growth; sepals 4, petals 4; colored Orange White Group 159D, typical of parent species.

Fruit.-Drupe containing 4 woody pyrenes; ellipsoid; approximately 8 to 11mm in diameter.

Fruit color.- Dull to semi-glossy, Red Group 46B.

Plant growth characteristics:

Plants have a slender conical growth habit with seven year individuals growing to roughly 3 m in height and 1 m in width. Branching is symmetrical without extensive pruning with plants establishing a dominant central trunk. Xia Yen produces adequate annual crops of colorful red berries but does not fruit as heavily as Huo Yen holly. This variety's primary merit is a unique combination of foliage texture and dark green leaves in combination with superior plant form.

Environmental tolerance:

Testing to date indicates that Xia Yen has improved cold hardiness and tolerance of moisture stress as compared to *Ilex cassine*. Environmental adaptation appears to be equivalent to *Ilex opaca*. It is anticipated that this new variety will be adapted to the same landscape conditions and climatic range associated with *I. opaca*.

I claim:

1. A new and distinct variety of *Ilex X attenuata* plant, substantially as herein shown and described, characterized particularly as to novelty by the unique combination of:

- (a) a well branched slender upright conical growth habit with annual crops of red berries,
- (b) requires less shearing and produces fewer poor quality propagules during commercial production than the Foster holly clones,
- (c) evergreen, fine textured lustrous leaves which maintain superior color throughout the year when compared to other *Ilex X attenuata* clones such as Foster #2, Foster #3, and East Palatka,
- (d) environmental tolerance is superior to *I. cassine* and equivalent to *I. opaca*.

ABSTRACT

XIA YEN is a distinctive new evergreen holly distinguished from all other forms of *Ilex* in that it combines a unique combination of desirable landscape and production traits from the parental species, *I. opaca* and *I. cassine*. Plants have a well branched slender upright conical growth habit with annual crops of red berries and leaves which maintain superior color throughout the year as compared to other *Ilex X attenuata* clones such as Foster #2, Foster #3, and East Palatka. During commercial production Xia Yen requires less shearing and produces fewer culls than the Foster hollies. Plants have the environmental tolerances of the *I. opaca* parentage. It is anticipated Xia Yen will be marketed bearing the DIXIE STAR HOLLY trademark.



FIGURE 1



FIGURE 2

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PTO/SB/03 (12-97)

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a valid OMB control number.

DECLARATION – Plant Patent Application

I hereby claim the benefit under 35 U.S.C. 120 of any United States application(s), or 365(c) of any PCT International application designating the United States of America, listed below and, insofar as the subject matter of each of the claims of this application is not disclosed in the prior United States or PCT International application in the manner provided by the first paragraph of 35 U.S.C. 112, I acknowledge the duty to disclose information which is material to patentability as defined in 37 CFR 1.56 which became available between the filing date of the prior application and the national or PCT International filing date of this application.

U.S. Parent Application or PCT Number	Parent Filing Date (MM/DD/YYYY)	Parent Patent Number (if applicable)

Additional U.S. or PCT International application numbers are listed on a supplemental priority data sheet PTO/SB/02B attached hereto.

As a named inventor, I hereby appoint the following registered practitioner(s) to prosecute this application and to transact all business in the Patent and Trademark Office connected therewith: Customer Number → Place Customer Number Bar Code Label here
OR
 Registered practitioner(s) name/registration number listed below

Name	Registration Number	Name	Registration Number

Additional registered practitioner(s) named on supplemental Registered Practitioner Information sheet PTO/SB/02C attached hereto.

Direct all correspondence to: Customer Number or Bar Code Label OR Correspondence address below

Name	Cecil T. Pounders, Jr.		
Address	3140 Old Moulton Rd SW		
Address			
City	Decatur	State	AL
Country	U.S.A.	Telephone	(256) 350-9585
		ZIP	35603
		Fax	(256) 350-9585

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001 and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Name of Sole or First Inventor:	<input type="checkbox"/> A petition has been filed for this unsigned inventor			
Given Name (first and middle [if any])		Family Name or Surname		
Cecil T. Jr.		Pounders		
Inventor's Signature	Cecil T. Pounders, Jr.			Date 12-10-99
Residence: City	Decatur	State	AL	Country USA
Post Office Address	3140 Old Moulton Rd SW			
Post Office Address				
City	Decatur	State	AL	Country USA

Additional inventors are being named on the supplemental Additional Inventor(s) sheet(s) PTO/SB/02A attached hereto.

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